



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0448]

RIN 1625-AA87

Security Zone; Potomac River, Montgomery County, MD

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule establishes a security zone encompassing certain waters of the Potomac River. This action is necessary to prevent waterside threats and incidents immediately before, during and after events held at the Trump National Golf Club at Potomac Falls, VA. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Maryland-National Capital Region or designated representative. The regulation will enhance the safety and security of persons and property, while minimizing, to the extent possible, the impact on commerce and legitimate waterway use. We invite your comments on this rulemaking.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from June 22, 2017 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received by the Coast Guard on or before

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2017-0448. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on “Open Docket Folder” on the line associated with this rulemaking. You may submit comments, identified by docket number, using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Ronald L. Houck, at Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Regulatory History and Information

On five separate occasions since March 24, 2017, the COTP has established a temporary security zone encompassing certain U.S. navigable waters of the Potomac River during events

held at the Trump National Golf Club at Potomac Falls, VA. These security zones were established and enforced at the request of the U.S. Secret Service to support security measures required during visits by high-ranking United States government officials at the golf club.

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are impracticable, unnecessary, or contrary to the public interest. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest to delay the effective date of this rule due to the short time period between event planners notifying the Coast Guard and publication of this security zone. The NPRM process is contrary to the public interest by delaying the effective date of this rule or foregoing the necessary protections required for persons and property, surrounding and including high-ranking United States officials, given the high risk of injury and damage to high-ranking United States officials and the public. Immediate action is necessary to provide waterway and waterside security and protection for persons and property on and along the Potomac River. The Coast Guard is establishing this security zone to ensure the appropriate level of protection for high-ranking United States officials and the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this interim rule effective less than 30 days after publication in the *Federal Register* because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the security zone's intended objectives of protecting the high-ranking United States

officials and the public, as it would introduce vulnerability to U.S. navigable waterway safety and the security of high-ranking United States officials, as well as that of the general public.

III. Background, Purpose, and Legal Basis

The Coast Guard has given each Coast Guard COTP the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce. On several occasions during events held at the Trump National Golf Club at Potomac Falls, VA, the U.S. Secret Service has requested additional waterside security measures for a gathering of high-ranking United States officials at the golf club. These events are anticipated to continue during the current Presidential term and a permanent security zone will facilitate both the safety and security of these events and the high-ranking officials who attend them. The COTP Maryland-National Capital Region is establishing this security zone to protect high-ranking United States officials and the public, mitigate potential terrorist acts, and enhance public and U.S. navigable waterway safety and security in order to safeguard life, property, and the environment on or near the regulated area.

The purpose of this rulemaking is to enhance public and U.S. navigable waterway safety and security in order to safeguard life, property, and the environment on specified navigable waters of the Potomac River during frequent heightened security events that take place in close proximity to U.S. navigable waterways within the COTP's Area of Responsibility.

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

IV. Discussion of Interim Rule

The Coast Guard is revising regulations at 33 CFR part 165 by adding a security zone.

The security zone includes all U.S. navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the east by a line connecting the following points: latitude 39°04'02" W., longitude 077°19'48" W., thence south to latitude 39°03'39" W., longitude 077°20'02" W., and bounded on the west by longitude 077°22'06" W., located between Pond Island and Sharpshin Island, in Montgomery County, MD. Entry into the security zone would be prohibited, unless specifically authorized by the COTP Maryland-National Capital Region or a designated representative. Except for public vessels, this rule would require all vessels in the designated security zone as defined by this rule to immediately depart the security zone. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule. The duration of the zone is intended to ensure the safety of vessels and the specified navigable waters before, during, and after the event. The COTP Maryland-National Capital Region will notify waterway users and the boating community, via Broadcast Notice to Mariners (BNM), of the duration of the security zone as required to support the periodic occurrence of high security events.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not

been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location and duration of the security zone. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and access to the zone will be determined in consultation with the lead federal agency on a case-by-case basis when the zone is being enforced.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels that intend to transit the security zone may be small entities, for the reasons stated in section V.A above this rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the

rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a security zone that prohibits entry on specified waters of the Potomac River during frequently occurring heightened security events. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A Record of Environmental Consideration (REC) is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number USCG-2017-0448 for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as

follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.557 to read as follows:

§ 165.557 Security Zone; Potomac River, Montgomery County, MD.

- (a) Definitions. As used in this section:

Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his or her behalf.

Designated representative means a Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to enforce the security zone described in paragraph (a) of this section.

Public vessel has the same meaning as that term is defined under 46 U.S.C. 2101.

- (b) Location. The following area is a security zone: All navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the east by a line connecting the following points: latitude 39°04'02" W., longitude 077°19'48" W., thence south to latitude 39°03'39" W., longitude 077°20'02" W., and bounded on the west by longitude 077°22'06" W., located in Montgomery County, MD. Coordinates used in this section are based on NAD83.

- (c) Regulations. The general security zone regulations found in § 165.33 apply to the security zone created by this section.

(1) Except for public vessels, entry into or remaining in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. All vessels within the security zone at the time this regulation is enforced shall depart the zone immediately.

(2) Persons and vessel operators who intend to enter or transit the security zone while the zone is being enforced must obtain authorization from the Captain of the Port Maryland-National Capital Region or designated representative. Access to the zone will be determined in consultation with the lead federal agency on a case-by-case basis when the zone is enforced. To request permission to enter or transit the security zone, the Captain of the Port Maryland-National Capital Region or designated representatives can be contacted at telephone number 410-576-2693 or on marine band radio, VHF-FM channel 16 (156.8 MHz). Coast Guard vessels that enforce this section can be contacted on marine band radio, VHF-FM channel 16 (156.8 MHz). The operator of a vessel shall proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the Coast Guard to enter the security zone all persons and vessels must comply with the instructions of the Captain of the Port Maryland-National Capital Region or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone.

(3) The U.S. Coast Guard may be assisted by federal, state, and local law enforcement agencies in the patrol and enforcement of the security zone described in paragraph (a) of this section.

(d) Enforcement. The Captain of the Port Maryland-National Capital Region will provide the affected segments of the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), Local Notice to Mariners, and on-scene notice by designated representative or other appropriate means in accordance with 33 CFR 165.7.

Dated: June 22, 2017

M. W. Batchelder
Commander, U.S. Coast Guard
Acting Captain of the Port Maryland-National Capital Region.
[FR Doc. 2017-14395 Filed: 7/7/2017 8:45 am; Publication Date: 7/10/2017]